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PPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,671		08/01/2003	Peter T. O'Heeron	122182.0020	2693
30544	7590	590 03/01/2005		EXAMINER	
JACKSON	I WALKI	ER, L.L.P.		FLANAGAN, BEV	VERLY MEINDL
SUITE 2100	0				
112 EAST I	PECAN ST	Γ.	ART UNIT	PAPER NUMBER	
SAN ANTONIO, TX 78205			3739		
				DATE MAIL ED: 02/01/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Dispatch Examiner Examiner Art Unit Examiner Art Unit			Application No.	Applicant(s)					
Beverly M. Flanagan 3739		Office Action Summan	10/632,671	O'HEERON, PETER T.					
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Estancians of time may be available under the provisions of 37 CPR 1.13(q), in no event, however, may a reply be timely filed after 30 (g) MONTH from the mailing date of this communication. Estancians of time may be available under the provisions of 37 CPR 1.13(q), in no event, however, may a reply be timely filed after 30 (g) MONTH from the mailing date of this communication of the provision of t		Onice Action Summary	Examiner	Art Unit					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Eletracions of times may be available under the provisions of 37 CFR 1.35(s), in no event, however, may a riphy be timely filed If the period for engly selected above, the maximum statistory period vill apply and will expire state of the provisions of 37 CFR 1.35(s). If the period for engly selected above, the maximum statistory period vill apply and will expire state of the state of the state of the state of the communication of thing (30) days will be considered timely. If NO period for regly is specified above, the maximum statistory period vill apply and will expire state (30) days will be considered timely. If NO period for regly is specified above, the maximum statistory period vill apply and will expire state (30) days will be considered timely. If NO period for regly is specified above, the maximum statistory period vill apply and will expire state of this communication. Finalthe the regular village date of this communication, seen if immay fluid, may reduce any cannot provide any cannot be applicated on the communication, even if immay fluid, may reduce any cannot provide any cannot be applicated on the communication, even if immay fluid, may reduce any cannot be applicated to a provide any cannot be applicated on the communication, even if immay fluid, may reduce any cannot be application in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) is/are allowed. 5) Claim(s) is/are allowed. 5) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 7) Claim(s) is/are allowed. 8) Claim(s)									
THE MAILING DATE OF THIS COMMUNICATION. Edencinos of time may be available under the provision of 3 CPR 1.15(g). In no event, however, may a reply be timely filled after CSK (6) MONTHS from the mailing date of this communication. It NO parido for reply sequeliate under the provision of 10 central part of the communication. Failure to reply visible in the set of extended principle of the communication. Failure to reply visible in the set of extended principle for reply visit, by adultion, cause the application to become ARADONED (38 U.S. C.§ 133). Any reply received by the Official set then there more mails above, the mainium astatory principle visible, cause the spellaciation to become ARADONED (38 U.S. C.§ 133). Any reply received by the Official set the thin there more mails after the mailing date of this communication, even if timely filled, may reduce any readined patient term adjustment. See 37 CFR 1.79(b). Status 1) Responsive to communication(s) filled on									
1) Responsive to communication(s) filed on	 THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any 								
2a) This action is FINAL. 2b) This action is non-final. 3	Status								
3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ⟨Claim(s) _ is/are pending in the application. 4a) Of the above claim(s) _ is/are withdrawn from consideration. 5) ⟨Claim(s) _ is/are allowed. 6) ⟨Claim(s) _ is/are rejected. 7) ⟨Claim(s) _ is/are objected to. 8) ⟨Claim(s) _ is/are objected to. 8) ⟨Claim(s) _ are subject to restriction and/or election requirement. Application Papers 9) ⟨The specification is objected to by the Examiner. 10) ⟨The drawing(s) filed on _ is/are: a) ⟨ accepted or b) ⟨ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) ⟨The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) ⟨ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) ⟨ All b) ⟨ Some * c) ⟨ None of: 1. ⟨ Certified copies of the priority documents have been received in Application No 3. ⟨ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. BEVENTY IF CAMAGAN PRIMARY EXAMINER Attachment(s) 1) ⟨ Notice of References Cited (PTO-952) 2) ⟨ Notice of References Cited (PTO-1449 or PTO/S808)	1) 🗌	Responsive to communication(s) filed on	_•						
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application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. **BEVEREY M. FLANAGAN **BEVEREY M. FLANAGAN **BEVEREY M. FLANAGAN **PRIMARY EXAMINER** **Attachment(s) 1) Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) **Disclosure Statement(s) (PTO-1449 or PTO/SB/08) **Disclosure Statement(s) (PTO-152)									
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Art Unit: 3739

DETAILED ACTION

The information disclosure statement filed January 31, 2005 has been made of record and the references cited therein have been considered by the examiner.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,830,578 in view of Sauer et al. (U.S. Patent No. 6,685,630) and further in view of Kortenbach et al. (U.S. Patent No. 5,624,459).

Claim 1 of U.S. Patent No. 6,830,578 teaches all of the elements recited in claim 1 of the instant invention *except* side faces which are flat and slope from the shaft toward the distal end of the obdurator, and beveled portions on the glide tip that extend along the side faces and have a downward bevel. Sauer et al. discloses a similar obdurator 12 with a distal tip 28 that has four substantially flat surfaces 28a, 28b, 28c

Art Unit: 3739

and 28d that slope from the shaft of the obdurator towards the distal tip (see Figure 3). Sauer et al. thus demonstrate that obdurator tips having four flat surfaces are well known in the art as an alternate shape for the piercing tip (compare to Figure 4 of Sauer et al., which has a conical tip). Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the piercing tip 35 of U.S. Patent No. 6,830,578 with four flat surfaces that slope from the shaft of the abdurator towards the distal tip, in the manner disclosed by Sauer et al. Similarly, Kortenbach et al. disclose a trocar 100 having a distal cutting tip 106 that includes three sharpened fins 106a-106c where each fin includes a single bevel 116a-116c that faces downward (see Figures 1 and 2). Kortenbach et al. discuss at length that importance of the bevels in penetrating tissue (see col. 1 and col. 2 of Kortenbach et al.). Kortenbach et al. thus demonstrate that beveled edges on the fins or blades of a cutting tip of a trocar are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the blade 37 of U.S. Patent No. 6,830,578 with a downward bevel on the to wing elements 39A and 39B, in the manner disclosed by Kortenbach et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Wednesdays and Fridays.

Application/Control Number: 10/632,671 Page 4

Art Unit: 3739

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bevery M. Flanagan

Primary Examiner

Art Unit 3739